ILE COPY.

Office Supreme Court U. S.
FILED
FEB 4 1903
JAMES H. McKENNEY,
Clerk.

No. 264

MOTION TO ADVANCE.

Supreme Court of the United States,

OCTOBER TERM, 1902.

THE BOARD OF COUNTY COMMISSIONERS OF STANLY COUNTY AND OTHERS, APPELLANTS,

vs.

W. N. COLER & COMPANY, APPELLEES.

Brief of James E. Shepherd and A. C. Avery, Counsel for Appellants.

IN SUPPORT OF MOTION TO ADVANCE.

FACTS RELIED ON IN SUPPORT OF MOTION.

The decision in this cause, which the appellants seek to have reviewed, is one of the Circuit Court of Appeals for the Fourth Circuit, which conflicts directly with three decisions of the Supreme Court of North Carolina, to-wit:

Commissioners v. Snuggs, 121 N. C., 394.
Commissioners v. Call, 123 N. C., 308.
Commissioners v. Payne, 123 N. C., 432.

The first of the foregoing cases, *Commissioners* v. *Snuggs*, is one in which the Supreme Court of North Carolina held that certain sections of The Code of North Carolina did not authorize Stanly County to issue certain municipal bonds, whereas in the cause brought up for review the said Circuit Court of Appeals decided that the very same provisions of said Code did empower Stanly County to issue said bonds. The bonds in question are therefore held to be invalid by said Supreme Court, but are declared valid by said Federal Court.

The same question was decided in the same way by the Supreme Court of North Carolina.

The appellants are of the opinion that the facts set forth above bring this cause within the exception to rule 26, sub-section 7, by showing "special and peculiar circumstances." A very unusual state of affairs is presented when the judges of the Circuit Court of the United States are so long left at liberty to restrain the local agencies of the State from obeying the law as interpreted by the highest tribunal of the State. For four years circuit and district judges, in disregard of State decisions, have been restraining municipal authorities from expending certain funds in a manner declared lawful by their own highest Court. Such a state of uncertainty as to what is the law of the land is to be deplored, because it embarrasses governmental agencies in the discharge of their duties. But this case appears more clearly to present "special and peculiar circumstances" when we consider the fact that they affect the the validity of a class of securities offered upon the market as negotiable, which are declared by the State Courts to be void because issued without such authority as is declared essential by mandatory requirement of the State Constitution, while Federal tribunals are inviting investments in these securities by holding that the decisions of the State Courts are in violation of the Constitution of the United States.

The questions involved are fully presented in the briefs filed in support of the motion for writ of certiorari; but it will be remembered that the Supreme Court of the United States in *Commissioners of Wilkes County* v. *Coler*, U. S., declined to construe these provisions of The Code, because the question was not certified.

JAMES E. SHEPHERD, AND
A. C. AVERY,
Counsel for Appellants.